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PARENTS INVOLVED IN COMMUNITY SCHOOLS,
Petitioner,

v.

SEATTLE SCHOOL DISTRICT NO. 1, ET AL.,
Respondent.

CRYSTAL D. MEREDITH, Custodial Parent and Next Friend of JOSHUA RYAN MCDONALD,
Petitioner,

v.

JEFFERSON COUNTY BOARD OF EDUCATION, ET AL.,
Respondents.

On Writs of Certiorari to the United States Courts of Appeals For the Ninth and Sixth Circuits

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BRIEF *AMICUS CURIAE* OF THE NATIONAL EDUCATION ASSOCIATION, ET AL., IN SUPPORT OF RESPONDENTS

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Martin v. Charlotte-Mecklenburg Bd. of Educ., 626 F.2d 1165 (4th Cir. 1980) 10, 11

TABLE OF AUTHORITIES—Continued

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Martin v. School Dist. of Phila., No. CIV.A. 95-5650, 1995 WL 564344 (E.D. Pa. Sept. 21, 1995) 11
McCollum v. Board of Educ., 333 U.S. 203 (1948) 18
McFarland v. Jefferson Cty. Pub. Schs., 330 F. Supp. 2d 834 (W.D. Ky. 2004), *aff'd*, 416 F.3d 513 (6th Cir. 2005) 7
Milliken v. Bradley, 418 U.S. 717 (1974) 11, 14
Missouri v. Jenkins, 515 U.S. 70 (1995) 13
New Jersey v. T.L.O., 469 U.S. 325 (1985) 13
North Carolina State Bd. of Educ. v. Swann, 402 U.S. 43 (1971) 5
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San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1 (1973) 14
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United States v. Lopez, 514 U.S. 549 (1995) 11

TABLE OF AUTHORITIES—Continued

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Washington v. Seattle School Dist. No. 1, 458 U.S. 457, 473 (1982) 15
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N.M. Const. art. XII, § 1	11
N.Y. Const. art. XI, § 1	11
Neb. Const. art. VII, § 1	11
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Or. Const. art. VIII, § 3	11
Pa. Const. art. III, § 14	11
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Va. Const. art. VIII, § 1	12
Vt. Const. ch. 2, § 68	12
W. Va. Const. art. XII, § 1	12
Wash. Const. art. IX, § 1	12
Wis. Const. art. X, § 3	12
Wyo. Const. art. VII, § 1	12

MISCELLANEOUS

Amy Stuart Wells & Robert L. Crain, *Perpetuation Theory and the Long-Term Effects of School Desegregation*, 64 Rev. Educ. Res. 531 (Winter 1994) 23, 29

TABLE OF AUTHORITIES—Continued

Page

Bernadette Gray-Little & Robert A. Carels, *The Effect of Racial Dissonance on Academic Self-Esteem and Achievement in Elementary, Junior High, and High School Students*, 7 J. Res. on Adolescence 109 (1997) 28

Bert Meltzer, *The Influence of the Duration of Interracial Classroom Contact on the Development of Interpersonal Cognitive Skills* (Doctoral Dissertation, Clark University) (Ann Arbor Mich: University Microfilms 1969, No. 69-20, 406) 26, 27

Carl Bankston III & Stephen J. Caldas, *Majority African American Schools and Social Injustice: The Influence of De Facto Segregation on Academic Achievement*, 75 Soc. Forces 535 (Dec. 1996) 28

Carole G. Goldstein et al., *Racial Attitudes in Young Children as a Function of Interracial Contact in the Public Schools*, 49 Am. Orthopsychiatric Ass'n 89 (Jan. 1979) 19

Charles S. Bullock III, *Contact Theory and Racial Tolerance Among High School Students*, 86 Sch. Rev. 187 (Feb. 1978) 18

Christopher B. Swanson, *Who Graduates? Who Doesn't? A Statistical Portrait of Public High School Graduation Class of 2001* (Feb. 2004) .. 28, 29

Christopher G. Ellison & Daniel A. Powers, *The Contact Hypothesis and Racial Attitudes Among Black Americans*, 75 Soc. Sci. Q. 385 (June 1994) 16, 17

TABLE OF AUTHORITIES—Continued

Page

David W. Johnson & Roger T. Johnson, *Effects of Cooperative, Competitive and Individualistic Learning Experiences on Cross-Ethnic Interaction and Friendships*, 118 J. Soc. Psychol. 47 (1982) 19

Elliot Aronson & Diane Bridgeman, *Jigsaw Groups and the Desegregated Classroom: In Pursuit of Common Goals*, 5 Personality & Soc. Psychol. Bull. 438 (1979) 19

Eric A. Hanushek et al., *New Evidence about Brown v. Board of Education: The Complex Effects of School Racial Composition on Achievement* (Oct. 2004) 28

Erica Frankenberg et al., *A Multiracial Society With Segregated Schools: Are We Losing the Dream?* (Jan. 2003) 5

Gary Orfield & Chungmei Lee, *Racial Transformation & The Changing Nature of Segregation* (Jan. 2006) 4, 5

Gary Orfield et al., *Losing Our Future: How Minority Youth Are Being Left Behind by the Graduation Rate Crisis* (2004) 29

Gordon W. Allport, *The Nature of Prejudice* (Addison-Wesley Publishing Co., 1954) 16

Heidi McGlothlin & Melanie Killen, *Intergroup Attitudes of European American Children Attending Ethnically Homogenous Schools*, 77 Child Dev. 1375 (Sept. 2006) 20, 21

Heidi McGlothlin et al., *European-American Children's Intergroup Attitudes About Peer Relationships*, 23 Brit. J. of Developmental Psychol. 227 (2005) 20, 21

TABLE OF AUTHORITIES—Continued

Page

James E. Ryan, *Voluntary Integration: Asking the Right Questions*, 67 Ohio St. L.J. 327 (2006)..... 5

Janet Ward Schofield, *Black and White In School Trust, Tension, or Tolerance?* (Teachers College Press, 1989)..... 18

Jennifer Jellison Holme et al., *Learning Through Experience: What Graduates Gained by Attending Desegregated High Schools*, 38 Equity & Excellence in Educ. 14 (2005)..... 24, 25

Jomills Henry Braddock II & James M. McPartland, *Social-Psychological Processes That Perpetuate Racial Segregation*, 19 J. Black Stud. 267 (1989).....23, 29, 30

Jonathan Guryan, *Desegregation and Black Dropout Rates* (Oct. 2003) 29

Josh Kagan, Note, *A Civics Action: Interpreting Adequacy in State Constitutions' Education Clauses*, 78 N.Y.U. L. Rev. 2241 (2003) 12

Julie F. Mead, *Conscious Use of Race As a Voluntary Means to Educational Ends in Elementary and Secondary Education: A Legal Argument Derived from Recent Judicial Decisions*, 8 Mich. J. Race & L. 63 (2002) 4

Kathryn Borman et al., *Accountability in a Postdesegregation Era: The Continuing Significance of Racial Segregation in Florida's Schools*, 41 Am. Educ. Res. J. 605 (Fall 2004)... 28

Lee Sigelman & Susan Welch, *The Contact Hypothesis Revisited: Black-White Interaction and Positive Racial Attitudes*, 71 Soc. Forces 781 (Mar. 1993)..... 16

TABLE OF AUTHORITIES—Continued

Page

Lee Sigelman et al., *Making Contact? Black-White Social Interaction in an Urban Setting*, 101 Am. J. Soc. 1306 (Mar. 1996) 23

Marilynn B. Brewer & Norman Miller, *Contact and Cooperation When Do They Work?*, *in* ELIMINATING RACISM: PROFILES IN CONTROVERSY (Phyllis A. Katz & Dalmas A. Taylor eds., 1988) 17

Marvin P. Dawkins & Jomills Henry Braddock II, *The Continuing Significance of Desegregation: School Racial Composition and African American Inclusion in American Society*, 63 J. Negro Educ. 394 (1994) 24

Mary R. Jackman & Marie Crane, "*Some of my best friends are black . . .*: *Interracial Friendship and Whites' Racial Attitudes*, 50 Pub. Opinion Q. 459 (1986) 16, 18

Michal Kurlaender & John T. Yun, *Is Diversity a Compelling Educational Interest?: Evidence from Louisville*, *in* DIVERSITY CHALLENGED EVIDENCE ON THE IMPACT OF AFFIRMATIVE ACTION (Gary Orfield ed., 2001) 24, 26

Molly McUsic, *The Use of Education Clauses in School Finance Reform Litigation*, 28 Harv. J. on Legis. 307 (1991) 12

Nancy Geyelin Margie et al., *Minority Children's Intergroup Attitudes About Peer Relationships*, 23 Brit. J. of Developmental Psychol. 251 (2005) 20, 21

Peter B. Wood & Nancy Sonleitner, *The Effect of Childhood Interracial Contact on Adult Antiblack Prejudice*, 20 Int'l J. Intercultural Rel. 1 (1996) 23, 24

TABLE OF AUTHORITIES—Continued

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Poppy Lauretta McLeod, et al., *Ethnic Diversity and Creativity in Small Groups*, 27 Small Group Res. 248 (May 1996) 25

Richard R. Scott & James M. McPartland, *Desegregation as National Policy: Correlates of Racial Attitudes*, 19 Am. Educ. Res. J. 397 (Fall 1982) 19

Rita E. Mahard & Robert L. Crain, *Research on Minority Achievement in Desegregated Schools*, *in* THE CONSEQUENCES OF SCHOOL DESEGREGATION (Christine H. Rossell & Willis D. Hawley eds., 1983) 27

Robert Balfanz & Nettie Legters, *Locating the Dropout Crisis: Which High Schools Produce the Nation's Dropouts?* (Sept. 2004) 28

Robert Crain & Jack Strauss, *School Desegregation and Black Occupational Attainments: Results from a Long-Term Experiment* (N.I.E. July 1985) 29

Robert E. Slavin, *Cooperative Learning: Applying Contact Theory in Desegregated Schools*, 41 J. Soc. Issues 45 (1985) 19, 22

Robert E. Slavin, *Effects of Biracial Learning Teams on Cross-Racial Friendships*, 71 J. Educ. Psychol. 381 (1979) 19

Robert L. Crain & Rita E. Mahard, *School Racial Composition and Black College Attendance and Achievement Test Performance*, 51 Soc. Educ. 81 (1978) 30

Roslyn Arlin Mickelson, *The Academic Consequences of Desegregation and Segregation: Evidence from the Charlotte-Mecklenburg Schools* (Aug. 15, 2002) 28

TABLE OF AUTHORITIES—Continued

Page

Samuel L. Gaertner et al., *How Does Cooperation Reduce Intergroup Bias?*, 59 J. of Personality & Soc. Psychol. 692 (1990) 23

Samuel L. Gaertner et al., *The Contact Hypothesis: The Role of a Common Ingroup Identity on Reducing Intergroup Bias*, 25 Small Group Res. 224 (May 1994) 23

Sandra Koslin et al., *Classroom Racial Balance and Students' Interracial Attitudes*, 45 Soc. Educ. 386 (Fall 1972) 19

Susanne E. Dutton et al., *Racial Identity of Children in Integrated, Predominantly White, and Black Schools*, 138 J. Soc. Psychol. 41 (1998) 17, 21

The Civil Rights Project-Harvard University, *The Impact of Racial and Ethnic Diversity on Educational Outcomes: Cambridge, MA School District* (Jan. 2002) 24, 26

Thomas Corcoran & Margaret Goertz, *The Governance of Public Education, in* THE PUBLIC SCHOOLS (Susan Fohrman & Marvin Lazerson, eds., 2005) 12

U.S. Census Bureau, *Selected Social Characteristics in the United States: 2005* (*available at* http://factfinder.census.gov) 10

U.S. Census Bureau, *U.S. Interim Projections by Age, Sex, Race, and Hispanic Origin* (Aug. 26, 2004) (*available at* http://www.census.gov/ipc/www/usinterimproj) 4

U.S. Dep't of Educ., NCES, *Projections of Education Statistics to 2015* (NCES 2006-084) ... 10

TABLE OF AUTHORITIES—Continued

Page

William J. Genova & Herbert J. Walberg, *A Practioners' Guide for Achieving Student Integration in City High Schools* (1980) 21

William T. Trent, *Outcomes of School Desegregation: Findings from Longitudinal Research*, 66 J. Negro Educ. 255 (1997) 23

Yehuda Amir, *The Role of Intergroup Contact in Change of Prejudice and Ethnic Relations*, *in* TOWARDS THE ELIMINATION OF RACISM (Phyllis A. Katz ed., 1976) 21, 22

INTEREST OF *AMICI CURIAE*

This brief *amicus curiae* is submitted, with the consent of the parties,[1] on behalf of the National Education Association ("NEA"), 43 of its affiliated state education associations,[2] and its affiliated local education associations in Seattle, Washington, and Jefferson County, Kentucky (the Seattle Education Association and the Jefferson County Teachers Association, respectively); the American Federation of Labor–Congress of Industrial Organizations ("AFL-CIO"), and its affiliated national union, the American Federation of Teachers ("AFT"); and People For the American Way Foundation ("People For").

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[1] Letters of consent are on file with the Clerk. No counsel for a party authored this brief in whole or in part, and no person or entity other than *amici curiae* made a monetary contribution to the preparation or submission of the brief.

[2] The state education associations that join in this brief are the Alabama Education Association, NEA-Alaska, Arizona Education Association, Arkansas Education Association, California Teachers Association, Colorado Education Association, Connecticut Education Association, Delaware State Education Association, Federal Education Association, Florida Education Association, Georgia Association of Educators, Hawaii State Teachers Association, Idaho Education Association, Illinois Education Association, Kansas NEA, Kentucky Education Association, Louisiana Association of Educators, Maine Education Association, Maryland State Teachers Association, Michigan Education Association, Education Minnesota, Missouri NEA, Nebraska State Education Association, Nevada State Education Association, NEA-New Hampshire, New Jersey Education Association, NEA-New Mexico, North Carolina Association of Educators, North Dakota Education Association, Ohio Education Association, Oklahoma Education Association, Oregon Education Association, Pennsylvania State Education Association, National Education Association Rhode Island, South Dakota Education Association, Tennessee Education Association, Texas State Teachers Association, Vermont-NEA, Virginia Education Association, Washington Education Association, West Virginia Education Association, Wisconsin Education Association Council, and Wyoming Education Association.

NEA is a nationwide employee organization with more than 3.2 million members, the vast majority of whom are employed by public school districts, colleges, and universities. NEA operates through a network of affiliated organizations at the state and local levels, including the state and local education associations that have joined in this brief. One of NEA's core principles is that "great public schools are a basic right for every child." To implement this principle, the NEA Representative Assembly, which is NEA's highest governing body, has adopted a resolution declaring that a "racially diverse student population is essential for all elementary/secondary schools" because it "promote[s] racial acceptance, improve[s] academic performance, and foster[s] a robust exchange of ideas." These are likewise the views of the NEA affiliates that have joined in this brief.

AFL-CIO is the largest organization of working men and women in the United States, consisting of 53 national and international unions representing nine million members. Many of these members, including those of the AFL-CIO's affiliate AFT, teach or perform other essential services in public elementary and secondary schools. The AFT, for example, represents over 1.3 million members, the majority of whom work in our nation's urban public schools. Dating back to the Court's historic desegregation decision in *Brown v. Board of Education*, 347 US 483 (1954), in which the AFT filed an amicus curiae brief supporting the plaintiffs, the AFL-CIO and AFT have had an enduring commitment to educational equality for all, regardless of race. That interest continues in the present cases in which core questions of integration, and educational and economic opportunity are presented.

The AFL-CIO and AFT also recognize that virtually every graduate of our public schools will enter the workplace as an owner, manager, supervisor, union member and/or employee. In the workplace, these graduates will be expected to honor a set of fundamental public policies, including the command

that they not discriminate on the basis of race. The experience of the AFL-CIO and the AFT teaches that the unique opportunities to interact with people from other races in the public schools that are fostered by the policies at issue in this case, have substantial, positive impact on students, making them better citizens in our democracy and in the workplace, as well as more productive members of society. Specifically, the challenged policies reduce employment discrimination and equip America's workers to flourish in an increasingly diverse society and global economy.

People For is a nonpartisan, education-oriented, citizens' organization established to promote and protect civil and constitutional rights. Founded in 1980 by a group of civic, religious, and educational leaders devoted to our nation's heritage of tolerance, pluralism, and liberty, People For now has more than 700,000 members and supporters nationwide. People For continues to seek to combat discrimination and its effects and to promote quality public education, including classroom diversity, through educational programs and participation in important litigation such as these cases.

INTRODUCTION

Amici believe that racially integrated public elementary/secondary schools not only help to overcome our nation's deplorable legacy of slavery, segregation, and discrimination, but also—and more to the point in the present context—enable such schools to fulfill their dual mission of instilling in all students "the values on which our society rests," *Ambach v. Norwich*, 441 U.S. 68, 76 (1979), and providing them with the skills and knowledge necessary to realize their full potential. *Wisconsin v. Yoder*, 406 U.S. 205, 239 (1972).

Because of the changing demographics of American society, the ability of an individual to function in a racially diverse environment is increasingly important. By the time the children who are entering first grade this year graduate from high school, fully 38.7% of our population will be of

African-American, American Indian, Asian, Latino, Native Hawaiian, or multiracial descent (an increase from 30.6% in 2000).[3] These demographic shifts reflect an ongoing trend in which "[t]he country as a whole and the workforce in particular is becoming more, not less [racially] diverse."[4]

At the same time that American society is becoming more racially diverse, the nation's public elementary/secondary schools are becoming more racially segregated. In the 2003-04 school year, the average white student attended a public school in which white students made up 78% of the student body, even though white students constituted 58% of the overall public school student population.[5] In that same year, the average black student attended a public school in which black students made up 53% of the student body, even though black students constituted just 17% of the overall public school student population, and the average latino student attended a public school in which latino students made up 55% of the student body, even though latino students constituted just 19% of the overall public school student population.[6] The fact of the matter is that our nation's public

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[3] *See* U.S. Census Bureau, *U.S. Interim Projections by Age, Sex, Race, and Hispanic Origin* (Aug. 26, 2004) (*available at* http://www.census.gov/ipc/www/usinterimproj).

[4] Julie F. Mead, *Conscious Use of Race As a Voluntary Means to Educational Ends in Elementary and Secondary Education: A Legal Argument Derived from Recent Judicial Decisions*, 8 Mich. J. Race & L. 63, 134-35 (2002).

[5] Gary Orfield & Chungmei Lee, *Racial Transformation & The Changing Nature of Segregation* 8-9 (Jan. 2006).

[6] *Id.* The segregated status of a significant portion of the nation's public elementary/secondary schools is even starker. In the 2003-04 school year, 79% of black students in the Northeast attended majority-minority schools (*i.e.*, schools in which non-white minorities made up more than half of the student body), and 76% of black students in the West attended such schools. *Id.* at 10. During that same school year, 81% of latino students in the West attended majority-minority schools, and 78% of latino students in the South attended such schools. *Id.* at 10-

elementary/secondary schools are more segregated today than they were two decades ago, and the trend toward increased segregation is projected to continue.[7]

Confronted with this disturbing reality, respondent school districts, in an effort to achieve racially integrated elementary/secondary public schools, adopted student assignment plans that, to a limited degree, take race into account. This Court repeatedly has taken the position that the decision to adopt such a plan is within the "broad power" school districts have "to formulate and implement educational policy." *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 16 (1971) (explaining that a school district could, pursuant to its broad discretionary powers, "conclude, for example, that in order to prepare students to live in a pluralistic society each school should have a prescribed ratio of [black] to white students reflecting the proportion for the district as a whole").[8]

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11. Minorities are disproportionately concentrated in majority-minority schools in other sections of the country as well. *Id.* In fact, fully 38% of blacks and 39% of latinos nationwide attended schools in 2003-04 in which over 90% of the students were minorities. *Id.*

[7] *See e.g.*, Erica Frankenberg et al., *A Multiracial Society With Segregated Schools: Are We Losing the Dream?* 4-6 (Jan. 2003) (reporting that school segregation in some areas has increased to levels not seen in three decades and explaining that "[t]he persisting high levels of residential segregation for blacks and increasing levels for [l]atinos, as reported in the 2000 Census indicate that desegregated education will not happen without plans to make it happen."); James E. Ryan, *Voluntary Integration: Asking the Right Questions*, 67 Ohio St. L.J. 327 (2006) ("Levels of segregation by race and income are remarkably high, and they are rising rather than falling.").

[8] *See also North Carolina State Bd. of Educ. v. Swann*, 402 U.S. 43, 45 (1971) ("[A]s a matter of educational policy school authorities may well conclude that some kind of racial balance in the schools is desirable quite apart from any constitutional requirements"); *Bustop, Inc. v. Board of Educ. of L.A.*, 439 U.S. 1380, 1383 (1978) (Rehnquist, J., denying stay) (explaining that stay of desegregation order was inappropriate because

Amici respectfully urge this Court to reaffirm that position in the cases that are now before it, and hold that a school district may take race into account in making student assignments if the school district determines that doing so is necessary to fulfill its mission. As we show in this brief, such a ruling would acknowledge the uniquely important role that public education plays in preparing students to function effectively in a multi-racial, democratic society, accord with the deference this Court has long given to the educational policy judgments of school districts as to how best to carry out their mission, and comport with the wealth of empirical evidence regarding the societal and educational benefits that are obtained by students who attend racially integrated schools.[9]

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there was "very little doubt" that the order, issued on state constitutional grounds, was constitutionally permissible even if not constitutionally required); *Keyes v. School Dist. No. 1*, 413 U.S. 189, 242 (1973) (Powell, J., concurring in part and dissenting in part) (explaining that "[s]chool boards would, of course, be free to develop and initiate further plans to promote school desegregation . . . Nothing in this opinion is meant to discourage school boards from exceeding minimum constitutional standards in promoting the values of an integrated school experience.").

[9] Such a holding would, moreover, be consistent with this Court's recognition in *Grutter v. Bollinger*, 539 U.S. 306, 328 (2003), and *Regents of the University of Cal. v. Bakke*, 438 U.S. 265, 311-13 (1978), that ensuring diversity – including racial diversity – can serve a compelling governmental interest in the educational context. While neither the Seattle School District No. 1 nor the Jefferson County School District are universities, able to carefully craft a small select student body from a pool of applicants, that fact alone does not end the inquiry, as petitioners and their supporting *amici* appear to suggest. The same types of considerations that led this Court to recognize racial diversity as a compelling governmental interest in the higher education context, compel the conclusion that ensuring racial diversity in public elementary/secondary schools—the educational institutions that instruct almost all of our nation's children during their formative years—serves an even more compelling governmental interest. *See infra* at 17 (explaining the benefits of early interracial contact).

Before turning to this showing, however, we pause to address an important threshold issue—*viz.* whether the constitutionality *vel non* of respondent school districts' race-conscious student assignment plans should be determined on the basis of strict scrutiny or some type of lesser scrutiny. Although, for the reasons briefly set forth in the margin, *amici* believe that such student assignment plans should be subjected to lesser scrutiny,[10] we defer to respondents and their other supporting *amici* for extended argument on this issue. For present purposes, *amici* assume that strict scrutiny is the appropriate legal test. Proceeding on that assumption, we focus in this brief on the first prong of that test,[11] and explain why this Court should hold that the educational policy judgment of a school district to take race into account in making student assignments in order to achieve racially

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[10] Because the plans apply equally to all students regardless of their race, deprive no one of a free and equal education, and deprive no one of a particular job or career, they impose extremely limited, if any, burdens on individuals, which justifies subjecting the plans to less than strict scrutiny. *See Parents Involved in Cmty. Schs. v. Seattle Sch. Dist., No. 1*, 426 F.3d 1162, 1193-94 (9th Cir. 2005) (Kozinski, J., concurring); *Comfort v. Lynn*, 418 F.3d 1, 27-29 (1st Cir.) (Boudin, C.J., concurring), *cert. denied*, 126 S. Ct. 798 (2005). As Justice Powell observed in *Bakke*, 438 U.S. at 301 n.39, the situation of a student "bused from his neighborhood school to a comparable school," is "wholly dissimilar" to that of a higher education applicant who is denied admission to a school without being offered admission to a comparable school and who thereby is potentially denied entrance to his chosen field or profession. Unlike the higher education applicant, petitioners are merely being assigned to a different but comparable school to the one they would prefer, but have no right, to attend. *See Certification from the U.S. Ct. of Appeals in Parents Involved in Cmty. Schs. v. Seattle Sch. Dist., No. 1*, 72 P.3d 151, 156 (Wa. 2003); *McFarland v. Jefferson Cty. Pub. Schs.*, 330 F. Supp. 2d 834, 860 (W.D. Ky. 2004), *aff'd*, 416 F.3d 513 (6th Cir. 2005). *Cf. Bustop, Inc.*, 439 U.S. at 1383.

[11] We again defer to respondents and their other supporting *amici* as to the "narrow tailoring" prong of the strict scrutiny test.

integrated public elementary/secondary schools serves a compelling governmental interest.

SUMMARY OF ARGUMENT

Racial classifications continue to carry great weight in our society—dividing opportunities inequitably and distorting perceptions with stereotypes and prejudice. Confronted with this reality, respondent school districts decided that taking race into account in making student assignments in order to achieve racially integrated public elementary/secondary schools would allow them to fulfill their dual mission of instilling in all children "the values on which our society rests," *Ambach v. Norwich*, 441 U.S. 68, 76 (1969), and providing them with the skills and knowledge necessary to realize their full potential. *Wisconsin v. Yoder*, 406 U.S. 205, 239 (1972). This Court repeatedly has recognized that school districts have "broad power" "to formulate and implement educational policy," and that a plan that takes race into account in making student assignment decisions may be constitutionally permissible even if not constitutionally required. *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 16 (1971). The educational policy judgment made by respondent school districts in the instant cases should be accorded the deference that this Court has long given to the educational policy judgments of school districts as to how best to fulfill their mission. **(PART I)**

The education policy judgment of respondent school districts that racially integrated public elementary/secondary schools would allow them to fulfill their mission finds ample support in empirical evidence. This evidence indicates that such schools provide significant societal and educational benefits to students of all races. Specifically:

1. Although racially integrated schools are not the only way to reduce stereotypes and prejudice, such schools have been found to be more effective in promoting tolerance and cross-racial understanding than

any other pedagogical method—including a multicultural curriculum;

2. Racially integrated schools offer enduring benefits to a multiracial, democratic society and its citizens. Students who learn to interact with students of other races in school are far more likely to function effectively in a racially diverse environment and to promote cross-racial understanding in later life than are students who do not have such interactions; and

3. Interactions among students of different races—with different vantage points, skills, and values—are of great consequence not only to the students' development as citizens in a multiracial, democratic society, but also to their intellectual development. The impact of encountering and dealing with racial diversity as part of their education is positively linked to growth in cognitive and academic skills of both racial minority and white students. These educational benefits are realized not only while children are in school, but in their subsequent lives as well. **(PART II)**

ARGUMENT

I. A SCHOOL DISTRICT'S EDUCATIONAL POLICY JUDGMENT THAT TAKING RACE INTO ACCOUNT IN MAKING STUDENT ASSIGNMENTS IN ORDER TO ACHIEVE RACIALLY INTEGRATED PUBLIC ELEMENTARY/SECONDARY SCHOOLS, WILL ALLOW IT TO FULFILL ITS MISSION, SHOULD BE ACCORDED JUDICIAL DEFERENCE

As this Court repeatedly has recognized, public elementary/secondary schools serve as the critical foundation for our democratic society, providing students with the education "necessary . . . to participate effectively and intelligently in our political system," *Yoder*, 406 U.S. at 225, and teaching them how to be "self-reliant and self-sufficient participants in society." *Id.* at 221. The public schools not only instill in the

49 million students who attend them "the values on which our society rests," *Ambach*, 441 U.S. at 76, but they provide those students with the skills and knowledge necessary to realize their full potential by "expand[ing] their knowledge, broaden[ing] their sensibilities, kindl[ing] their imagination, foster-[ing] a spirit of free inquiry, and increas[ing] their human understanding and tolerance." *Yoder*, 406 U.S. at 239.[12]

If a school district concludes that it cannot accomplish these two important interrelated objectives without racially integrated public elementary/secondary schools, and that it cannot achieve such schools without taking race into account in making student assignments, the federal courts should defer to that educational policy judgment. Doing so would acknowledge that, under our federal system, the responsibility for providing public education rests primarily with states and school districts, and would accord with this Court's long-standing practice of giving deference to the educational policy judgment of school districts as to how best to fulfill their mission.

This Court's recognition that school districts have "broad power" "to formulate and implement educational policy"—including an educational policy that takes race into account in making student assignments in order to achieve racially integrated public elementary/secondary schools—rests on a firm foundation. *Swann*, 402 U.S. at 16. *See also supra* n.8.[13] Under our federal system, providing public education

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[12] Roughly nine out of every ten students are enrolled in public elementary/secondary schools. U.S. Dep't of Educ., NCES, *Projections of Education Statistics to 2015* 40 (NCES 2006-084). Just less than half of those students—22 million—will receive their entire formal education in these schools; they will not complete any higher degree. U.S. Census Bureau, *Selected Social Characteristics in the United States: 2005* (*available at* http://factfinder.census.gov).

[13] *See also* the array of lower court precedents upholding the constitutionality of voluntary school desegregation efforts, *e.g.*, *Lynn*, 418 F.3d at 16, 21; *Martin v. Charlotte-Mecklenburg Bd. of Educ.*, 626 F.2d

has always been primarily the responsibility of states and school districts—constituting "perhaps the most important function of state and local governments." *Brown v. Board of Educ.*, 347 U.S. 483, 493 (1954). *See also United States v. Lopez*, 514 U.S. 549, 564 (1995) (recognizing that "education [is an area] where States historically have been sovereign"); *Milliken v. Bradley*, 418 U.S. 717, 741 (1974) (explaining that "no single tradition in public education is more deeply rooted than local control over the operation of schools.").

The educational systems that states and school districts have developed under this federal system are complex and varied. While every state constitution obligates the state legislature to provide a public education system,[14] and state

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1165, 1166 (4th Cir. 1980); *Parent Ass'n of Andrew Jackson High Sch. v. Ambach*, 598 F.2d 705, 717-21 (2d Cir. 1979); *Offermann v. Nitkowski*, 378 F.2d 22, 24 (2d Cir. 1967); *Martin v. School Dist. of Phila.*, No. CIV.A. 95-5650, 1995 WL 564344 (E.D. Pa. Sept. 21, 1995); *Tometz v. Board of Educ., Waukegan City Schs. Dist. No. 61*, 237 N.E.2d 498, 501 (Ill. 1968) (collecting other cases upholding voluntary school integration efforts). *Cf. Brewer v. West Irondequoit Cent. Sch. Dist.*, 212 F.3d 738, 749 (2d Cir. 2000) (school district could have a compelling interest in reducing racial isolation and *de facto* segregation in its schools).

[14] *See* Ala. Const. art. XIV, § 256; Alaska Const. art. VII, § 1; Ariz. Const. art. XI, § 1; Ark. Const. art. XIV, § 1; Cal. Const. art. IX, §§ 1, 6; Colo. Const. art. IX, §2; Conn. Const. art. VIII, § 1; Del. Const. art. X, § 1; Fla. Const. art. IX, § 1; Ga. Const. art. VIII, § 1; Haw. Const. art. X, § 1; Idaho Const. art. IX, § 1; Ill. Const. art. X, § 1; Ind. Const. art. VIII, § 1; Iowa Const. art. IX, 2d, § 3; Kan. Const. art. VI, § 1; Ky. Const. § 183; La. Const. art. VIII, § 1; Me. Const. art. VIII, pt. 1, § 1; Md. Const. art. VIII, § 1; Mass. Const. pt. 2, ch. 5, § 2; Mich. Const. art. VIII, § 2; Minn. Const. art. XIII, § 1; Miss. Const. art. VIII, § 201; Mo. Const. art. IX, § 1(a); Mont. Const. art. X, § 1; Neb. Const. art. VII, § 1; Nev. Const. art. XI, § 2; N.H. Const. pt. 2, art. LXXXIII; N.J. Const. art. VIII, § 4, ¶ 1; N.M. Const. art. XII, § 1; N.Y. Const. art. XI, § 1; N.C. Const. art. IX, § 2; N.D. Const. art. VIII, § 1; Ohio Const. art. VI, § 3; Okla. Const. art. XIII, § 1; Or. Const. art. VIII, § 3; Pa. Const. art. III, § 14; R.I. Const. art. XII, § 1; S.C. Const. art. XI, § 3; S.D. Const. art. VIII, § 1; Tenn. Const.

and local revenues provide the vast bulk of public education funding,[15] the resulting state educational systems vary widely in their legal obligations, governance, and policies.[16] State constitutions, for example, contain markedly different language regarding the type of public education that must be provided by the state, which has been interpreted to markedly different ends.[17] Most to the point for present purposes, some states have interpreted their constitutional obligation to provide a public education system to encompass the duty to provide an integrated system by remedying not just *de jure*, but also *de facto*, racial segregation in the schools.[18]

When states and school districts make the educational policy judgment that racially integrated public elementary/ secondary schools are necessary for them to fulfill their

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art. XI, § 12; Tex. Const. art. VII, § 1; Utah Const. art. X, § 1; Vt. Const. ch. 2, § 68; Va. Const. art. VIII, § 1; Wash. Const. art. IX, § 1; W. Va. Const. art. XII, § 1; Wis. Const. art. X, § 3; Wyo. Const. art. VII, § 1.

[15] Thomas Corcoran & Margaret Goertz, *The Governance of Public Education, in* THE PUBLIC SCHOOLS 33-34 (Susan Fohrman & Marvin Lazerson, eds., 2005) (explaining that the federal government provides less than 10% of the funding for public education, and has "limited control over the structure and content of [that] education").

[16] *Id.* at 37-38, 40-41 (detailing the differing state curriculum, graduation requirements, governance and funding structures).

[17] *See* Molly McUsic, *The Use of Education Clauses in School Finance Reform Litigation*, 28 Harv. J. on Legis. 307 (1991) (describing different types of state constitutional language); Josh Kagan, Note, *A Civics Action: Interpreting "Adequacy" in State Constitutions' Education Clauses*, 78 N.Y.U. L. Rev. 2241, 2242-43, 2261 n.117 (2003) (describing different types of state constitutional language and varied interpretations).

[18] *See Sheff v. O'Neill*, 678 A.2d 1267, 1285 (Conn. 1996) (holding that extreme racial isolation in the public schools, even if resulting from *de facto* segregation, violates the education clause of the Connecticut Constitution); *Jackson v. Pasadena City School Dist.*, 382 P.2d 878, 881 (Cal. 1963) (holding that "the harmful consequences of segregation require that school boards take steps, insofar as reasonably feasible, to alleviate racial imbalance in schools regardless of its cause").

mission, it is appropriate under our federal system for the federal courts to defer to that judgment. As this Court has advised, "federal courts should not ordinarily 'intervene in the resolution of conflicts which arise in the daily operation of school systems.'" Such matters generally fall within "the comprehensive authority of the States and of school officials . . . to prescribe and control conduct in the schools." *Board of Educ. v. Pico*, 457 U.S. 853, 864 (1982) (quoting *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 507 (1969)). Putting that presumption into practice, this Court has upheld various state and school district actions against constitutional challenges, even though the challenged conduct would have been unconstitutional if it had occurred outside the school context.[19]

The same reasoning has led this Court to direct federal courts to terminate school desegregation decrees "at the earliest practicable date" in order to return schools "to the control of local authorities," and thereby "restore their true accountability in our governmental system." *Freeman v. Pitts*, 503 U.S. 467, 490 (1992). *See also Missouri v. Jenkins*, 515 U.S. 70, 100 (1995); *Board of Educ. of Okla. v. Dowell*, 498 U.S. 237, 250 (1991). In doing so, this Court has made clear that the termination of such desegregation decrees does not mean "that the potential for discrimination and racial hostility" no longer exists, but that each state and school district should decide how to "ensure that such forces do not shape or control the policies of its school systems." *Freeman*, 503 U.S. at 490.

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[19] *See New Jersey v. T.L.O.*, 469 U.S. 325, 340 (1985) (explaining "the school setting requires some easing of the restrictions to which searches by public authorities are ordinarily subject"); *Hazelwood Sch. Dist. v. Kulmeier*, 484 U.S. 260, 266 (1988) (reiterating that "the First Amendment rights of students in the public schools . . . must be 'applied in light of the special characteristics of the school environment.'") (quoting *Tinker*, 393 U.S. at 506).

These precedents counsel that when states and school districts decide, as a matter of educational policy, that racially integrated schools are a key component of the education that they seek to provide, the federal courts should be reluctant to second-guess that decision. In the words of this Court, "[e]ducation . . . presents a myriad of 'intractable economic, social, and even philosophical problems.'" *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 42 (1973). "The very complexity of the problems" involved "suggests that 'there will be more than one constitutionally permissible method of solving them.'" *Id.* at 42:

> In such circumstances, the judiciary is well advised to refrain from imposing on the States inflexible constitutional restraints that could circumscribe or handicap the continued research and experimentation so vital to finding even partial solutions to educational problems and to keeping abreast of ever-changing conditions. [*Id.* at 43.][20]

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[20] To be sure, this presumption against interference with state and school district decisionmaking is not the same First Amendment consideration that led this Court in *Grutter* and *Bakke* to defer to the educational policy judgments of university administrators. *See Grutter*, 539 U.S. at 328; *Bakke*, 438 U.S. at 311-13. But the presumption provides, if anything, an even more compelling reason for deference in the elementary/secondary public school context inasmuch as "no single tradition in public education is more deeply rooted than local control over the operation of schools." *Milliken*, 418 U.S. at 741.

Moreover, petitioners and their supporting *amici* err in describing public elementary/secondary schools as mere institutions for "inculcating" societal norms in which First Amendment interests have no application. Like colleges and universities, schools are "marketplaces of ideas" in which students learn not just from their teachers, but from each other as well. *Tinker*, 393 U.S. at 512 (quoting *Shelton v. Tucker*, 364 U.S. 479, 487 (1960)). As such, schools, like colleges and universities, are entitled to deference in the judgments they make to establish and maintain a vibrant marketplace of ideas.

II. A SUBSTANTIAL BODY OF EMPIRICAL EVIDENCE DEMONSTRATES THAT RACIALLY INTEGRATED PUBLIC ELEMENTARY/SECONDARY SCHOOLS SERVE A COMPELLING GOVERNMENTAL INTEREST BY PROVIDING SIGNIFICANT SOCIETAL AND EDUCATIONAL BENEFITS TO STUDENTS OF ALL RACES

In concluding that they could not adequately fulfill their mission without racially integrated public elementary/secondary schools, respondent school districts were on very firm ground. A substantial body of empirical evidence demonstrates that such schools provide significant societal and educational benefits to students of all races—and, accordingly, serve a compelling governmental interest. We survey that empirical evidence below.

A. The Societal Benefits of Racially Integrated Schools

Because public elementary/secondary schools "are an important socializing institution, imparting those shared values through which social order and stability are maintained," *Plyler v. Doe*, 457 U.S. 202, 222 n.20 (1982), racially integrated schools provide children of all races with the opportunity to interact with one another on equal terms. Such contact "teach[es] members of the racial majority 'to live in harmony and mutual respect' with children of minority heritage" and provides "minority children" with the opportunity to "learn to function in—and [be] fully accepted by—the larger community." *Washington v. Seattle School Dist. No. 1*, 458 U.S. 457, 473 (1982).

In contrast, when "children attend racially and ethnically isolated schools, these 'shared values' are jeopardized." *Sheff v. O'Neill*, 678 A.2d 1267, 1285 (Conn. 1996). "If children of different races and economic and social groups have no opportunity to know each other and to live together in school,

they cannot be expected to gain the understanding and mutual respect necessary for the cohesion of our society." *Jenkins v. Morris Township Sch. Dist.*, 279 A.2d 619, 627 (N.J. 1971).

The commonsense assessment that interracial contact reduces racial stereotypes and prejudice, reflected in these decisions, is supported by substantial empirical evidence.

1. The theory that interracial contact reduces racial stereotypes and prejudice was articulated by Gordon W. Allport in his seminal work, *The Nature of Prejudice*. Allport posited that racial isolation breeds stereotypes and prejudice, and that "equal status contact between majority and minority groups in the pursuit of common goals" is a critical ingredient in improving relations between members of those groups, especially if such contact "is of a sort that leads to the perception of common interests and common humanity between members of the two groups."[21]

Subsequent empirical research has repeatedly and consistently confirmed that interracial contact combats stereotypes and prejudice, and makes individuals more comfortable relating to members of other racial groups.[22] This

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[21] Gordon W. Allport, *The Nature of Prejudice* 281 (Addison-Wesley Publishing Co., 1954).

[22] *See* Christopher G. Ellison & Daniel A. Powers, *The Contact Hypothesis and Racial Attitudes Among Black Americans*, 75 Soc. Sci. Q. 385, 386, 388, 395 (June 1994) (reviewing "considerable evidence [amassed over four decades] that contact has salutary effects" and reporting, based on survey of 2,107 adults, that blacks with close white friends had much "more favorable views of whites and race relations than those who lack such friends"); Lee Sigelman & Susan Welch, *The Contact Hypothesis Revisited: Black-White Interaction and Positive Racial Attitudes*, 71 Soc. Forces 781, 784, 788, 790 (Mar. 1993) (reporting, based on survey of 1,546 adults, that blacks with at least one white friend believed whites to be less hostile than blacks with no white friends and that whites "who live in less racially integrated areas also perceive blacks as somewhat more hostile"); Mary R. Jackman & Marie Crane, *"Some of my best friends are black . . .": Interracial Friendship and Whites' Racial Attitudes*, 50 Pub. Opinion Q. 459, 464, 470 (1986)

research makes plain, however, that the conditions of contact are critical to its impact.

In the first place, contact that occurs during key periods of personal development—most importantly during a child's formative years—and that frequently recurs, is far more effective at promoting tolerance and cross-racial understanding than intermittent contact among persons whose social beliefs and identities are fully formed. That is so because "[t]he early school years are crucial for the formation of the child's own racial identity as well as an understanding of prejudice and fairness." [23] Once the destructive "habit" of "racial stereotyping" is learned, it is difficult to break, making it "more difficult to teach racial tolerance to college-age students" than to public elementary/secondary school students.[24]

So too, contact with a number of different people of another race is more effective in breaking down racist attitudes than contact with just a few individuals of another race, because it forces people to "decategorize" those with whom they are dealing and to treat them as individuals rather than simply as members of a particular racial group.[25] While

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(reporting, based on survey of 1,914 adults, that whites' preference for "whites over blacks in basic feelings of warmth and closeness and in personal social predispositions in the workplace and neighborhood does decline quite markedly [with interracial contact]").

[23] Susanne E. Dutton et al., *Racial Identity of Children in Integrated, Predominantly White, and Black Schools*, 138 J. Soc. Psychol. 41, 42 (1998). Even casual interracial contact among children "is a stronger predictor [of] the odds of having at least one [interracial] friendship" as an adult, than later contact. Ellison & Powers, *supra* note 22, at 392.

[24] *See Comfort v. Lynn*, 283 F. Supp. 2d 328, 356 (D. Mass. 2003), *aff'd*, 418 F.3d 1 (1st Cir. 2005), *cert. denied*, 126 S. Ct. 798 (2005).

[25] Marilynn B. Brewer & Norman Miller, *Contact and Cooperation When Do They Work?*, *in* ELIMINATING RACISM: PROFILES IN CONTROVERSY 315, 318-20 (Phyllis A. Katz & Dalmas A. Taylor eds., 1988) (decategorization works when frequent interactions with individuals of another group eliminate the "meaning and utility" of treating those indi-

there clearly is no "magic number" of students of each racial subgroup required, to realize the greatest benefits of contact a school's population should be within the range of the demographic breakdown of the school district as a whole, so as to prevent students in minority groups from becoming isolated and shut out of the school's mainstream.[26]

Finally, contact must be among individuals of equal status—*e.g.*, between friends, teammates or classmates—lest contact serve simply to reinforce rather than reduce racist attitudes and prejudices.[27]

Given these findings, it is not surprising that interracial cooperative contact among students of different races in public elementary/secondary schools—our "most powerful agency for promoting cohesion among a heterogeneous democratic people," *McCollum v. Board of Educ.*, 333 U.S. 203, 216 (1948)—has repeatedly been linked with increased

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viduals primarily as members of another group). *See also* Jackman & Crane, *supra* note 22, at 468-71 (finding that whites who had both black acquaintances and friends displayed markedly less racist attitudes than whites with none or only one black acquaintance or friend).

[26] *Lynn*, 283 F. Supp. 2d at 357 (expert testimony that the gains from promoting school racial diversity "occur along a continuum; as the racial composition of school populations creeps closer to balanced, racial stereotyping and tension is reduced and racial harmony and understanding increases").

[27] *See, e.g.*, Charles S. Bullock III, *Contact Theory and Racial Tolerance Among High School Students*, 86 Sch. Rev. 187, 194, 206-07, 210-12 (Feb. 1978) (reporting, based on survey of 5,800 southern high school students, that white students' tolerance of black students increased with their number of black friends and number of contacts with black students in and outside of school; "having even a few friends [of another race] is related to substantially greater tolerance"); Janet Ward Schofield, *Black and White In School Trust, Tension, or Tolerance?* 157, 176-81 (Teachers College Press, 1989) (reporting that middle school integration alone generated "a definite, but relatively modest, improvement in relations between black and white students" but that cooperative activities among black and white students generated more significant improvements).

levels of tolerance for children of other races,[28] and increased likelihood, "approach[ing] . . . that [which] would have been anticipated in a truly color-blind society," that children of different races will become and remain friends.[29]

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[28] Sandra Koslin et al., *Classroom Racial Balance and Students' Interracial Attitudes*, 45 Soc. Educ. 386, 389, 405 (Fall 1972) (reporting a "clear[] relat[ion]" between integration and the racial attitudes of third graders as evidenced "by lower levels of racial tension and less racial polarization" in more integrated schools); Carole G. Goldstein et al., *Racial Attitudes in Young Children as a Function of Interracial Contact in the Public Schools*, 49 Am. Orthopsychiatric Ass'n 89, 90, 94 (Jan. 1979) (reporting, based on study of 1st graders, that "[w]hite children in interracial classrooms displayed a significant shift toward increased acceptance of blacks"); Richard R. Scott & James M. McPartland, *Desegregation as National Policy: Correlates of Racial Attitudes*, 19 Am. Educ. Res. J. 397, 402, 412 (Fall 1982) (reporting, based on survey of 2,300 middle and highschool students, that desegregation "is positively associated with racial tolerance for both whites and blacks").

[29] Robert E. Slavin, *Effects of Biracial Learning Teams on Cross-Racial Friendships*, 71 J. Educ. Psychol. 381, 386 (1979). *See also* Brewer & Miller, *supra* note 25 at 320 (noting "extensive literature documenting the positive effects of cooperative learning on improved interethnic acceptance within desegregated classrooms"); Robert E. Slavin, *Cooperative Learning: Applying Contact Theory in Desegregated Schools*, 41 J. Soc. Issues 45, 53, 59 (1985) (hereinafter *Slavin II*) (concluding, based on review of nineteen studies, "that when students work in ethnically mixed cooperative learning groups, they gain in cross-ethnic friendships" and "the effects . . . are strong and long-lasting"); David W. Johnson & Roger T. Johnson, *Effects of Cooperative, Competitive and Individualistic Learning Experiences on Cross-Ethnic Interaction and Friendships*, 118 J. Soc. Psychol. 47, 54 (1982) (reporting, based on study of 4th graders, that cooperative learning in racially diverse classrooms "result[ed] in greater cross-ethnic liking that lasts for months"); Elliot Aronson & Diane Bridgeman, *Jigsaw Groups and the Desegregated Classroom: In Pursuit of Common Goals*, 5 Personality & Soc. Psychol. Bull. 438, 441 (1979) (reporting that cooperative learning in racially diverse classrooms resulted in "significant increases in [children's] liking for their groupmates both within and across ethnic boundaries").

The foregoing evidence reflects the reality that "[s]tereotypes do not as easily take hold of children who interact early and often with children of other racial and ethnic groups. The personal connections forged between students of disparate racial backgrounds challenge race-based assumptions they might otherwise develop about one another."[30]

Illustrating that point in stark terms, three recent studies demonstrate a marked difference between the racial preconceptions of students educated in racially integrated schools versus those educated in racially homogenous schools.[31] In each study, first and fourth graders were shown pictures of two children (one black and one white) in an ambiguous situation in which one could, but need not, attribute negative intentions to one of the children depicted (*e.g.*, a child standing behind a swing could be viewed as having pushed the child in front of him to the ground or could be viewed as simply standing next to that child). The studies found that when white, black, latino, and asian children, who attended racially integrated schools, were asked what happened in these pictures their responses displayed no "implicit intergroup biases"; evidencing neither an "effect for the race of the transgressor" in the picture nor for the race of the study participant.[32] In contrast, white students who attended

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[30] *Lynn*, 283 F. Supp. 2d at 356 (expert testimony on this point).

[31] *See* Nancy Geyelin Margie et al., *Minority Children's Intergroup Attitudes About Peer Relationships*, 23 Brit. J. of Developmental Psychol. 251-69 (2005); Heidi McGlothlin et al., *European-American Children's Intergroup Attitudes About Peer Relationships*, 23 Brit. J. of Developmental Psychol. 227-49 (2005) ("*McGlothlin I*"); Heidi McGlothlin & Melanie Killen, *Intergroup Attitudes of European American Children Attending Ethnically Homogenous Schools*, 77 Child Dev. 1375-86 (Sept. 2006) ("*McGlothlin II*").

[32] Margie et al., *supra* note 31, at 255-57; *McGlothlin I*, *supra* note 31, at 235. The two studies did report some differences, however, in the children's views. Even though minority children believed that both the white and the black children depicted had engaged in the same behavior,

schools in which over 85% of the students were white "displayed racial bias in their interpretations of [the same] ambiguous interracial encounters," and that bias increased with age.[33]

The fact of the matter is that one-on-one contact has been found to be more effective in promoting racial tolerance and cross-race interaction than any other pedagogical method—including a multicultural curriculum[34]—confirming the view that "[w]ithout meaningful social contact, talk of tolerance and cooperation is nothing but an abstraction." *Lynn*, 283 F.

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they were more likely to view the conduct more negatively in one of the situations depicted (involving a child picking up money that another child appeared to have dropped) if a white rather than black child was shown picking up the money. Margie et al., *supra* at 258. White children, on the other hand, even though displaying no bias in their descriptions of the behavior, were less likely to view the black children depicted as potential friends. *McGlothlin I*, *supra* at 236.

[33] *McGlothlin II*, *supra* note 31, at 1377, 1383. Similarly, a 1998 study reported that white fourth graders in a predominantly white school were more likely than white fourth graders in integrated schools to choose a picture of a black child as representing the child—among an array of pictures of children—that they disliked most. Dutton, et al., *supra* note 23, 43-45, 47-48, 53. A similar racial aversion was found among black fourth graders in a predominantly black school, who more often picked the picture of the white child as the child they disliked most, than did black fourth graders in integrated schools. *Id.*

[34] *See* William J. Genova & Herbert J. Walberg, *A Practioners' Guide for Achieving Student Integration in City High Schools* 30, 32 (1980) (finding, based on survey of 1,484 high school juniors, that "opportunities . . . to get to know students from other racial and ethnic groups" were more strongly correlated to students' willingness to interact with individuals of other races than the students' exposure to a multicultural curriculum); Yehuda Amir, *The Role of Intergroup Contact in Change of Prejudice and Ethnic Relations*, *in* TOWARDS THE ELIMINATION OF RACISM 245, 266, 281 (Phyllis A. Katz ed., 1976) (reporting that direct interpersonal contact with blacks was more effective in changing white attitudes than participating in an educational program, and that a multicultural curriculum, standing alone, had little impact).

Supp. 2d at 334. Where school districts are allowed to take the steps necessary to ensure that students of different races have a meaningful opportunity to interact in the schools, a remarkable transformation can take place, replacing racial stereotypes, hostility and tension with "racial and ethnic tolerance" and "an emerging sense of community that crosses racial barriers." *Id.* at 376.[35] Such schools allow for the formation of "close, reciprocated [interracial] friendship choices, the kind of friendships that should be [the] most difficult to change,"[36] and which social scientists have long viewed "as one of most potent agents for ethnic change."[37]

As the foregoing review of the empirical evidence indicates, cooperative interracial contact reduces racial stereotypes and prejudice by teaching students that individuals hold a multitude of different viewpoints, experiences and attitudes, which cannot be meaningfully captured by reducing individuals to racial categories. By providing students with the opportunity to individualize others with whom they interact, schools also provide students with the opportunity to identify the concerns they share in common with students of other races.

In the end, this process—far from resulting in the racial balkanization that petitioners and their supporting *amici* evoke—leads to precisely the opposite result. As one researcher explained, cooperative interaction between different groups "induces the members [of different groups] to conceive of themselves as one (superordinate) group rather than as two separate groups, thereby transforming their

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[35] *See also Lynn*, 283 F. Supp.2d at 357 n.53 (developmental psychologist's testimony that she was "really surprised by the high level of positive [interracial] interaction among children" after implementation of voluntary integration plan and was "astound[ed]" that the resulting relationships carried over into informal settings such as the school cafeteria).

[36] *Slavin II*, *supra* note 29, at 55.

[37] Amir, *supra* note 34, at 272.

categorized representations from *us* and *them* to a more inclusive *we*."[38]

2. These consequences of racial diversity in our public elementary/secondary schools offer enduring benefits to our multiracial, democratic society and its citizens. "As adults [students who learn to interact with individuals of other races in elementary/secondary school] more frequently live[] in desegregated neighborhoods, ha[ve] children who attend[] desegregated schools, and ha[ve] close friends of the other race[s] than d[o] adults . . . who had attended segregated schools."[39] They are also more likely as adults to interact and work with individuals of other races than are students educated in racially homogeneous schools.[40]

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[38] Samuel L. Gaertner et al., *How Does Cooperation Reduce Intergroup Bias?*, 59 J. Personality & Soc. Psychol. 692, 693 (1990) (emphasis in original). *See also* Samuel L. Gaertner et al., *The Contact Hypothesis: The Role of a Common Ingroup Identity on Reducing Intergroup Bias*, 25 Small Group Res. 224, 242 (May 1994).

[39] Jomills Henry Braddock II & James M. McPartland, *Social-Psychological Processes That Perpetuate Racial Segregation*, 19 J. Black Stud. 267, 269, 273, 276 (1989) (reporting, based on national survey of 12,686 individuals, positive link between attending integrated schools and working in integrated environments in later life). *See also* Amy Stuart Wells & Robert L. Crain, *Perpetuation Theory and the Long-Term Effects of School Desegregation*, 64 Rev. Educ. Res. 531, 552 (Winter 1994) (concluding that "desegregated black [elementary and secondary school] students are more likely to have desegregated social and professional networks in later life," to work in desegregated environments and to work in private-sector white-collar and professional jobs); William T. Trent, *Outcomes of School Desegregation: Findings from Longitudinal Research*, 66 J. Negro Educ. 255, 256 (1997) (finding that increased school racial diversity "has a strong, statistically significant, and positive effect on the likelihood that Blacks will have White coworkers and that Whites will have Black coworkers").

[40] *See, e.g.*, Lee Sigelman et al., *Making Contact? Black-White Social Interaction in an Urban Setting*, 101 Am. J. Soc. 1306, 1322-23 (Mar. 1996); Peter B. Wood & Nancy Sonleitner, *The Effect of Childhood Interracial Contact on Adult Antiblack Prejudice*, 20 Int'l J. Intercultural

Several comprehensive studies of the racial attitudes of high school students, who were educated in integrated schools, support these conclusions. These studies demonstrate that racially integrated schools and classrooms produce students who have very high levels of comfort in dealing and working with individuals of other races in later life—which they attribute in large part to their school experiences.[41] For example, a survey of 242 high school graduates from the Class of 1980, reports that the graduates—even twenty years after the fact—viewed as "critically important" to their ability to interact cross-racially without fear or harmful precon-

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Rel. 1, 11, 14 (1996); Marvin P. Dawkins & Jomills Henry Braddock II, *The Continuing Significance of Desegregation: School Racial Composition and African American Inclusion in American Society*, 63 J. Negro Educ. 394, 397-400 (1994).

[41] *See* Jennifer Jellison Holme et al., *Learning Through Experience: What Graduates Gained by Attending Desegregated High Schools*, 38 Equity & Excellence in Educ. 14-15, 18-20 (2005) (reporting, based on survey of 242 adults twenty years after they graduated from racially diverse high schools, that "nearly all said that their high school experience left them more prepared for life in a racially diverse society than they otherwise would be," with "an increased sense of comfort in interracial settings" than their peers who had attended racially homogeneous schools); Michal Kurlaender & John T. Yun, *Is Diversity a Compelling Educational Interest?: Evidence from Louisville*, *in* DIVERSITY CHALLENGED EVIDENCE ON THE IMPACT OF AFFIRMATIVE ACTION 111, 118, 121, 124-25, 130, 132 (Gary Orfield ed., 2001) ("*KY Survey*") (reporting, based on survey of 1,164 high school juniors in racially diverse schools, that 94.9% of black students and 92.6% of white students reported being "comfortable" or "very comfortable" working with students of other races, that over 85% of both black and white students believed they were both prepared and likely to work in racially diverse job settings; and that over 90% of the students said they would be comfortable working for a supervisor of another race); The Civil Rights Project-Harvard University, *The Impact of Racial and Ethnic Diversity on Educational Outcomes: Cambridge, MA School District* 1, 4-7 (Jan. 2002) ("*MA Survey*") (reporting, based on survey of 379 seniors at racially diverse high school, similarly high levels of comfort and preparation to work in racially diverse settings).

ceptions, their "daily exposure to people of other racial groups in their early years in K-12 education—at a time when they were forming their beliefs about the world."[42]

In sum, students who attend racially integrated public elementary/secondary schools are far more likely in later life to function effectively in a variety of contexts—including, of particular importance to the *amici* unions, as members of a racially diverse and non-discriminatory workforce. Racially integrated public elementary/secondary schools produce these long-range benefits because they break the cycle of segregation in neighborhoods, schools, social networks, and occupations. Equally to the point, this evidence demonstrates that by closing the door on racial diversity in the schools, we open the door to further racial prejudice and discrimination by perpetuating the racial isolation that breeds such prejudice and discrimination.

B. The Educational Benefits of Racially Integrated Schools

Teaching students to individualize the persons with whom they are dealing and identify common ground is of great consequence not only to the students' development as citizens in a multiracial democratic society, but also to their intellectual development and academic success.

1. Social scientists have reported that heterogeneous groups—including groups that differ only in the participants' races—are better at creative problem-solving than homogeneous groups, due to the benefits of interactions between individuals with different vantage points, skills, and/or values.[43] That research reflects the fact that due to the

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[42] Holme et al., *supra* note 41, at 23.

[43] *See* Poppy Lauretta McLeod, et al., *Ethnic Diversity and Creativity in Small Groups*, 27 Small Group Res. 248, 250 (May 1996) (summarizing "consistent empirical support" for the conclusion that heterogeneous groups—including groups that are only racially diverse—generate more creative and feasible solutions than homogeneous groups).

continuing corrosive effect of racism in our society, people of different races often have very different life experiences and viewpoints. Reflecting that reality, high school students who are asked whether or not racial integration has enhanced their educational experience respond in the affirmative in overwhelming numbers.[44]

Other research provides further evidence of the cognitive benefits of interracial interactions in the educational context. For example, in one study, 250 high school students were asked to view a short film showing two boys (one black and one white) engaged in various activities—some positive, some negative and some ambiguous. The students were asked to describe what the boys had done and predict what each would do in various situations. White students who had had the opportunity for more interracial classroom contact

> (1) described [the boys] in ways that were more differentiated, more integrated, and more multivalent; (2) made prediction of the future behavior of [the boys] that were less absolute; (3) inferred the presence of attributes in [the boys] with less certainty; and (4) were less likely to perceive [the black boy] as submissive and [the white boy] as domin[a]nt.[45]

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[44] Over 80% of the students surveyed in Louisville, Kentucky and Cambridge, Massachusetts, believed that their experiences in racially integrated high schools "ha[d] helped [them] to work more effectively with and to get along better with members of other races and ethnic groups." *See KY Survey*, *supra* note 41, at 132; *MA Survey*, *supra* note 41, at 7. Students also gave strong responses to open-ended questions regarding the value to them of attending a racially integrated school. *See, e.g.*, *MA Survey*, at 6 (student saying he had "learned a lot about how to deal with people who are different, respect them and be interested in their culture and heritage and learn from them. Living and working with people from different race and ethnic group has become ordinary to me—it is not a big deal, and I think this will help me . . . throughout my life.").

[45] Bert Meltzer, *The Influence of the Duration of Interracial Classroom Contact on the Development of Interpersonal Cognitive Skills* 133-34

The white students' greater ability to describe the film participants in meaningful, individualized ways applied not only to their description of the black boy but to their description of the white boy as well, "suggest[ing] that interracial contact had a facilitating effect on the development of interpersonal cognitive skills in general."[46]

These studies corroborate the evidence credited by the court below in the Seattle School District No. 1 case, linking racial diversity in schools to "improved critical thinking skills—the ability to both understand and challenge views which are different from [one's] own." *Parents v. Seattle Sch. Dist. No. 1*, 426 F.3d at 1174.

2. Further support for the proposition that racial integration yields educational benefits is found in the voluminous social science literature analyzing the impact of school desegregation on student performance. Although not every study in this area has reached the same conclusion, once one accounts for methodological differences a broad consensus emerges that school desegregation has resulted in tangible and lasting improvements in black student academic achievement. As one of the definitive reviews of the literature concludes, desegregation has been positively linked to increases in black student achievement levels, generating gains on average of .3 of a grade year in student performance at the elementary/secondary school level, and gains on average of .57 of a grade year at the kindergarten level.[47]

More recent studies also have demonstrated positive links between black students' test achievement and their schools'

(Doctoral Dissertation, Clark University) (Ann Arbor Mich: University Microfilms 1969, No. 69-20, 406).

[46] *Id.* at 133.

[47] *See* Rita E. Mahard & Robert L. Crain, *Research on Minority Achievement in Desegregated Schools*, *in* THE CONSEQUENCES OF SCHOOL DESEGREGATION 103, 107, 111, 113 (Christine H. Rossell & Willis D. Hawley eds., 1983) (reassessing results of 93 separate studies).

racial diversity,[48] as well as between school desegregation and promotion and dropout rates, particularly for minority students.[49] Additional evidence to the same effect is

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[48] *See* Eric A. Hanushek et al., *New Evidence about Brown v. Board of Education: The Complex Effects of School Racial Composition on Achievement* 23-24 (Oct. 2004) (reporting "very strong evidence" that "mathematics achievement growth" in Texas during the 1990's was adversely affected by increasing school racial segregation and that reversing that trend by increasing school integration could close "over one-quarter of the seventh grade achievement gap between blacks and whites"); Kathryn Borman et al., *Accountability in a Postdesegregation Era: The Continuing Significance of Racial Segregation in Florida's Schools*, 41 Am. Educ. Res. J. 605, 615-16, 620, 626 (Fall 2004) (analysis of students' scores on 1999 FCAT (Florida's standardized test) finding that "[b]oth the racial composition of a school and whether a school was [b]lack segregated (relative to the school district's racial composition) predicted the percentage of students passing the FCAT" and reporting that lower passing rates for black students were linked to attendance at more segregated schools); Roslyn Arlin Mickelson, *The Academic Consequences of Desegregation and Segregation: Evidence from the Charlotte-Mecklenburg Schools* 7 (Aug. 15, 2002) (reporting that "the more time both black and white students spent in desegregated elementary schools, the better their academic achievement [was]" on standardized tests); Carl Bankston III & Stephen J. Caldas, *Majority African American Schools and Social Injustice: The Influence of De Facto Segregation on Academic Achievement*, 75 Soc. Forces 535, 544, 548 (Dec. 1996) (reporting that attending more segregated schools was linked, for black students, to lower performance on the Louisiana graduation test even after controlling for socioeconomic status); Bernadette Gray-Little & Robert A. Carels, *The Effect of Racial Dissonance on Academic Self-Esteem and Achievement in Elementary, Junior High, and High School Students*, 7 J. Res. on Adolescence 109, 125-26 (1997) (finding that black and white 11th graders had the highest achievement levels at racially balanced schools).

[49] Majority minority schools are "five times more likely to have weak promotion power (promote 50% or fewer freshman to senior status on time) than a majority white school." Robert Balfanz & Nettie Legters, *Locating the Dropout Crisis: Which High Schools Produce the Nation's Dropouts?* v, 5 (Sept. 2004) (showing that a school's promoting power decreases as the percentage of minority students in the majority-minority school increases). *See also* Christopher B. Swanson, *Who Graduates?*

provided by school districts that have pursued voluntary integration efforts. In Lynn, Massachusetts, for example, the voluntary integration plan has resulted in "higher [school] attendance rates, declining suspension rates, a safer environment, and improved standardized test scores."[50]

There is also a small but robust group of studies linking black student enrollment in predominantly white schools to significant gains in those students' long-term educational achievement. Black students enrolled in predominantly white high schools are more likely than black students enrolled in predominantly black high schools to graduate, more likely than those students to go on to higher education, and more likely when they do so to pursue higher-paying occupations that traditionally have been dominated by whites.[51]

Who Doesn't? A Statistical Portrait of Public High School Graduation Class of 2001 32-33 (Feb. 2004) (finding lower graduation rates for both black and white students in school districts with higher levels of racial segregation); Gary Orfield et al., *Losing Our Future: How Minority Youth Are Being Left Behind by the Graduation Rate Crisis* 6 (2004) (reporting that "whether a student attends a school district with a high concentration of minority students and has little exposure to white students" are "strong predictor[s]" of failure to graduate); Jonathan Guryan, *Desegregation and Black Dropout Rates* 17-18 (Oct. 2003) (reporting that school desegregation efforts from 1970-80 were linked to declining black drop-out rates even after controlling for socioeconomic status).

[50] *Lynn*, 418 F.3d at 14. Those results have also "stab[ilized the] enrollment of white students" in the district. *Lynn*, 283 F. Supp. 2d at 376.

[51] *See* Wells & Crain, *supra* note 39, at 535 (summarizing results of 21 studies and concluding that school desegregation increases black students' occupational aspirations, *id.* at 540, likelihood of going to college (at least for students in the north), *id.* at 542, likelihood of majoring in nontraditional fields, *id.* at 542-43, and likelihood of entering white collar and professional jobs, *id.* at 552); Robert Crain & Jack Strauss, *School Desegregation and Black Occupational Attainments: Results from a Long-Term Experiment*, 24-30 (N.I.E. July 1985) (reporting that black students educated in racially diverse environment were more likely to pursue nontraditional careers); Braddock & McPartland, *supra* note 39, at 271 (concluding that "[e]arlier desegregated schooling has a sizable *direct*

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The sum of the matter is this: because racially integrated public elementary/secondary schools provide significant societal and educational benefits, federal courts should allow school districts some room to consider race in making student assignments when those school districts determine that doing so is necessary to achieve and/or maintain such schools. This is not an "illegitimate use[] of race," *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 493 (1989), but is amply justified by the compelling governmental interest in educating all of our children to function effectively in a multiracial, democratic society and realize their full intellectual and academic potential.[52]

CONCLUSION

The judgments of the courts of appeals should be affirmed.

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effect on [b]lack attendance at desegregated two-year and four-year colleges in the South and on Black attendance at desegregated two-year colleges in the North" (emphasis in original)); Robert L. Crain & Rita E. Mahard, *School Racial Composition and Black College Attendance and Achievement Test Performance*, 51 Soc. Educ. 81, 98-99 (1978) (reporting that black students who graduated from predominantly white schools in the North in 1972 were 7% more likely to go to college and nearly twice as likely to stay in college than black students who did not).

[52] We pause to make one final point. Given the extent to which the No Child Left Behind Act focuses on the performance of racial subgroups as the key measure of how well public elementary/secondary schools perform, *see* 20 U.S.C. §§ 6311, 6316, the United States' insistence here that school districts be precluded altogether from taking race into account in making student assignment decisions rings particularly hollow. States and school districts should not be graded by the federal government based on how various racial subgroups in their schools perform, and then be prohibited from taking the very actions—achieving and/or maintaining racially integrated elementary/secondary schools—that they believe are necessary to close the racial achievement gaps highlighted by the NCLB.

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